IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 542 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRAN VAGHABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 542 of 2001

MR NIRZAR S DESAI for Petitioner No. 1

MR SS PATEL APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated July 31, 2000, Annexure C to the petition, passed by the Deputy Commissioner of Police, Zone -I, Ahmedabad City by which he has externed the petitioner for a period of two

years from five districts, i.e., Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated June 28, 2001, Annexure D to the petition, passed by the appellate authority, confirming the order of externment passed by the externing authority, and prayed to quash and set aside both the above mentioned orders.

2. A show cause notice dated December 14, 1999, Annexure A to the petition, under Section 59 of the Bombay Police Act ('the Act' for short) was issued to the petitioner in which two allegations were made against him to the effect that he is collecting money from traders doing trading near Juna Wadaj Circle, not paying money to traders for the articles which he is purchasing from them and if they ask for money, gives threat to kill them, not paying riskshaw fare to rickshaw drivers and if they demand money, gives threat to kill them. Besides this, two cases for the commission of offences under the Indian Penal Code are also registered against him at Naranpura Police Station. Therefore, by the show cause notice dated December 14, 1999, the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the above mentioned five districts.

3. The petitioner gave reply to the show cause notice on January 3, 2000, Annexure B to the petition.

4. The externing authority, after considering the reply submitted by the petitioner and other material on record, passed the impugned order of externment by exercising powers under section 56 (b) of the Act externing the petitioner for a period of two years from the above mentioned five districts.

5. Being aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal and the appellate authority by order dated June 28, 2001 dismissed the appeal filed by the petitioner which has given rise to the present petition.

6. Mr. Nirzar Desai, learned advocate for the petitioner has raised several contentions and tried to convince the Court that the order of externment suffers from various vices much less it is passed in clear non-application of mind. He further contended that the reply to the show cause notice was given on January 3, 2000 and the externment order was passed on July 31, 2000 and, therefore, there is a delay of about seven months in passing the order of externment which is not explained by

the externing authority. Therefore, on this sole ground, the order of externment is liable to be quashed and set aside.

7. Mr. S.S. Patel, learned APP who appears for the respondents does not dispute the factual aspect of delay of about seven months in passing the order of externment after reply to the show cause notice was given by the petitioner. He therefore urged to pass appropriate order in light of the law laid down by this Court in this regard.

8. I have considered the submissions advanced by the learned advocates for the parties. I have also considered the averments made in the petition, documents annexed with the petition and the impugned orders and also the judgment cited at the bar.

9. It is true that the externing authority has issued a show cause notice dated December 14, 1999 which was immediately replied by the petitioner on January 3, 2000 whereas the order of externment was passed on July 31, 2000. Therefore, there is a delay of about seven months in passing the order of externment which is not explained by filing affidavit in reply on behalf of the respondents.

10. In this connection, reference can be made to the judgment of a Division Bench of this court in the case of Santosh Ramprasad Sharma v. Deputy Commissioner of Police, 1992 (2) GLH 457. In the said decision, this Court has held that in externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need nor necessity to extern a person from a particular locality or a district. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment. In the said case, this Court quashed the externment order as there was unexplained delay of four months in passing the order of externment after issuance of show cause notice and the delay was not explained by filing affidavit in reply. The principles laid down by the Division Bench of this Court in the above cited judgment are clearly applicable to the facts of the present case. At the cost of repetition, be it stated that the show cause notice was issued on December 14, 1999 and reply was submitted by

the petitioner on January 3, 2000. However, the externment order is passed after about seven months, and the delay caused in passing the externment order is not explained by filing affidavit in reply. Therefore, on this ground alone, the petition deserves to be allowed by quashing and setting aside the order of externment.

11. For the foregoing reasons, the petition succeeds and it is accordingly allowed. The impugned order of externment passed by the externing authority and the order passed by the appellate authority confirming the externment order, both are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)